



Jersey

DRAFT FINANCIAL SERVICES COMMISSION (FINANCIAL PENALTIES) (AMENDMENT No. 2) (JERSEY) ORDER 202-

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Made [date to be inserted]
Coming into force [date to be inserted]

THE MINISTER FOR EXTERNAL RELATIONS AND FINANCIAL SERVICES makes this Order under Articles 21B and 22 of the Financial Services Commission (Jersey) Law 1998 and after having consulted the Jersey Financial Services Commission –

1 The Financial Services Commission (Financial Penalties) (Jersey) Order 2015 amended

- (1) This Order amends the Financial Services Commission (Financial Penalties) (Jersey) Order 2015.
- (2) In this Order, a reference to an Article by number only is a reference to the Article of the same number in the Financial Services Commission (Financial Penalties) (Jersey) Order 2015.

2 Article 1 (interpretation) amended

In Article 1 –

- (a) in paragraph (1) –
 - (i) after the definition “affiliation” there is inserted –

“ “associated persons” means such persons as are reasonably believed by the Commission to be associated with the registered person committing the contravention;
“beneficial owner or controller” is construed in accordance with Article 2 of the Money Laundering (Jersey) Order 2008;”,
 - (ii) for the definition “contravention” there is substituted –

“ “contravention” means a contravention of a Code of Practice or an enactment to which Article 21A of the Financial Services Commission (Jersey) Law 1998 applies;”,
 - (iii) after the definition “contravention” there is inserted –

- ““turnover”, in the case of a trust company business in respect of which there is an affiliation, includes the turnover from all members of the affiliation;”, and
- (iv) the definitions “licensed, “net interest income and “total banking income” are deleted;
- (b) after paragraph (1) there is inserted –
- “(2) When considering whether a person is associated to the registered person, the Commission may have regard to the following –
- (a) whether one person has been created to support the other’s business;
- (b) whether the registered person is majority owned or controlled by the other person;
- (c) whether the registered person majority owns or controls the other person;
- (d) whether both persons are jointly owned or controlled by a majority of the same persons;
- (e) whether the registered person is in a partnership or other legal arrangement with the other person (except that in a joint business venture only that part of the venture from which the registered person or an associated person thereof economically benefits shall be had regard to by the Commission); and
- (f) whether the income or profits of both persons are attributable to the same beneficial owner or controller.
- (3) Where the registered person is a company its associated persons includes any other company that is its holding company or subsidiary and any other company that is a subsidiary of the holding company.”.

3 Article 2 (meaning and calculation of relevant income) repealed

Article 2 is repealed.

4 Article 3 (level of penalties) amended

In Article 3(b) after “principal persons” there is inserted “, key persons or persons who perform or performed a senior management function”.

5 Schedule (maximum level of penalties) amended

In the Schedule –

- (a) after “principal person” there is inserted “, key person or person who performs or performed a senior management function”;
- (b) in band 1 in the third column for “4% of relevant income up to a maximum of £10,000” there is substituted the words “4% of the turnover from all the business activities of the registered person and its associated persons carried on in or from within Jersey”;

- (c) in band 2 in the third column for “6% of relevant income up to a maximum of £4,000,000” there is substituted “6% of the turnover derived from all the business activities of the registered person and its associated persons carried on in or from within Jersey”;
- (d) in band 2A in the third column for “7% of relevant income up to a maximum of £4,000,000” there is substituted “7% of the turnover derived from all the business activities of the registered person and its associated persons carried on in or from within Jersey”;
- (e) in band 3 in the third column for “8% of relevant income up to a maximum of £4,000,000” there is substituted “8% of the turnover derived from all the business activities of the registered person and its associated persons carried on in or from within Jersey”.

6 Savings and transitional provision

Where, before the coming into force of this Order, a notice of intent was issued and served under Article 21C of the Financial Services Commission (Jersey) Law 1998, any amount of the penalty required to be paid in a final notice issued under that Article is calculated on the basis of that Law and the Financial Services Commission (Financial Penalties) (Jersey) Order 2015 that were in force at the time of the issuance of the notice of intent.

7 Citation and commencement

This Order may be cited as the Financial Services Commission (Financial Penalties) (Amendment No. 2) (Jersey) Order 202- and comes into force [7 days after it is made].